

CHAPTER III

THE SOCIAL SECURITY SCHEMES UNDER VARIOUS STATUTES AND INTERNATIONAL INSTRUMENTS

CONTENTS

168-254

| | | |
|---------------|--|------------|
| 3.1 | Nature and Concept of the Social Security | 175 |
| 3.2 | Statutory Protection of the Social Security Schemes: | |
| | Indian Perspective | 176 |
| 3.2.1 | Provisions under the Indian Constitution | 176 |
| 3.2.2 | Provisions Under The Workmen's | |
| | Compensation Act, 1923 | 179 |
| 3.2.2.1 | Objective and Applicability of the Act | 179 |
| 3.2.2.2 | Conditions for the Payment of Workmen's | |
| | Compensation | 180 |
| 3.2.2.3 | Limitations on the Payment of Workmen's | |
| | Compensation by Employers | 181 |
| 3.2.2.4 | Calculation of Amount of Compensation | 182 |
| 3.2.2.5 | Administration of the Scheme | 185 |
| 3.2.3 | Provisions under the Employees State Insurance | |
| | Act, 1948 | 185 |
| 3.2.3.1 | Object and Application of the Scheme | 185 |
| 3.2.3.2 | Benefits under the Scheme | 186 |
| 3.2.3.3 | Contributions under the Scheme | 194 |
| 3.2.3.4 | Administration of the Scheme | 195 |
| 3.2.4. | Provisions under the Employees Provident | |
| | Fund & Miscellaneous Provisions Act, 1952 | 195 |

| | | |
|---------|--|-----|
| 3.2.4.1 | Applicability of the Act | 195 |
| 3.2.4.2 | Rate of Contributions under the Scheme | 196 |
| 3.2.4.3 | Advance from the Statutory Fund | 196 |
| 3.2.4.4 | The Employees Deposit Linked Insurance Scheme, 1976 | 197 |
| 3.2.4.5 | The Employees Pension Scheme, 1995 | 198 |
| 3.2.4.6 | Administration of Provident Fund Schemes | 201 |
| 3.2.5. | Provisions under the Maternity Benefits Act, 1961 | 201 |
| 3.2.5.1 | Application and Scope of the Scheme | 201 |
| 3.2.5.2 | Benefits under the Scheme | 202 |
| 3.2.5.3 | Administration of Scheme | 203 |
| 3.2.6 | Provisions under the Payment of Gratuity Act, 1972 | 204 |
| 3.2.6.1 | Purpose and Application of the Scheme | 204 |
| 3.2.6.2 | Benefits under the Scheme | 205 |
| 3.3 | International Instruments and the Social Security Schemes | 206 |
| 3.3.1 | The Human Rights aspect related to the Social Security | 206 |
| 3.3.1.1 | The Universal Declaration of Human Rights, 1948 | 206 |
| 3.3.1.2 | The International Covenant on Economic, Social, and Cultural Rights, 1966 | 208 |

| | | |
|--------------|--|-----|
| 3.3.1.3 | International Covenant on Civil and Political Rights , 1966 | 213 |
| 3.4 | International Social Security Systems: A comparative study of various Countries | 217 |
| 3.4.1 | The United States of America | 218 |
| 3.4.1.1 | The Social Security Act, 1935 | 218 |
| 3.4.1.2 | The Social Security Act, 1939 | 219 |
| 3.4.1.3 | The Social Security Act, 1946 | 220 |
| 3.4.1.4 | The Social Security (Amendment) Act, 1947 | 222 |
| 3.4.1.5 | The Social Security (Amendment) Act, 1950 | 222 |
| 3.4.1.6 | The Sickness and Maternity Benefits Provisions 1965 | 222 |
| 3.4.1.7 | The Social Security Act, 1965 | 223 |
| 3.4.1.7 | The Employees Retirement Income Security Act, 1974 | 223 |
| 3.4.1.9 | The Social Security Program, 1977 | 224 |
| 3.4.1.10 | The Omnibus Reconciliation Act, 1981 | 224 |
| 3.4.2 | The United Kingdom | 224 |
| 3.4.2.1 | The Workmen's Compensation Act, 1897 | 225 |
| 3.4.2.2 | The Old Age Pension Act, 1908 | 225 |
| 3.4.2.3 | The National Insurance Act, 1911 | 226 |
| 3.4.2.4 | The Sickness and Maternity Act, 1911 | 226 |
| 3.4.2.5 | The Social Security and Housing Benefit Act, 1982 | 226 |

| | | |
|--------------|--|------------|
| 3.4.3 | Japan | 227 |
| 3.4.3.1 | The Health Insurance provisions 1922 | 227 |
| 3.4.3.2 | The National Health Insurance Provisions, 1938 | 227 |
| 3.4.3.3 | The Employees Pension Program, 1941 | 228 |
| 3.4.3.4 | The Unemployment Benefit Program, 1947 | 228 |
| 3.4.3.5 | The National Pension Program, 1959 | 228 |
| 3.4.3.6 | The Family Allowances Scheme, 1971 | 229 |
| 3.4.4 | Australia | 229 |
| 3.4.4.1 | The Old Age and Invalidity Pension Scheme, 1908 | 229 |
| 3.4.4.2 | The Family Allowances Scheme, 1941 | 230 |
| 3.4.4.3 | The Unemployment Benefits Scheme. 1944 | 230 |
| 3.4.4.4 | The Sickness and Maternity Benefit Scheme, 1944 | 231 |
| 3.4.4.5 | The Social Security Consolidation Act, 1947 | 231 |
| 3.4.5 | Federal Republic of Germany | 232 |
| 3.4.5.1 | The Wage Earner's Sickness Insurance Act, 1883 | 232 |
| 3.4.5.2 | The Accident Insurance Act, 1884 | 233 |
| 3.4.5.2 | The Invalidity and Old Age Protection Act, 1889 | 233 |
| 3.4.5.4 | The Unemployment Insurance Act, 1927 | 234 |
| 3.4.5.5 | The Family Allowances Scheme, 1954 | 234 |

| | | |
|--------------|---|------------|
| 3.4.5.6 | The Occupational Safety Act, 1974 | 234 |
| 3.4.5.7 | The Rehabilitation Benefit Alignment Act, 1974 | 235 |
| 3.4.6 | China | 235 |
| 3.4.6.1 | The Old Age, Invalidity and Survivor Scheme, 1951 | 235 |
| 3.4.6.2 | The Cash Sickness and Maternity Scheme, 1951 | 236 |
| 3.4.6.3 | The Worker's Compensation Scheme, 1951 | 236 |
| 3.4.6.4 | The Unemployment Benefit Scheme, 1986 | 237 |
| 3.4.7 | New Zealand | 237 |
| 3.4.7.1 | The Old Age, Invalid and Death Act, 1898 | 238 |
| 3.4.7.2 | The Comprehensive Accidents Program, 1908 | 238 |
| 3.4.7.3 | The Family Allowances Scheme, 1926 | 239 |
| 3.4.7.4 | The Unemployment Benefit Scheme, 1930 | 239 |
| 3.4.7.5 | The Social Security Act, 1938 | 239 |
| 3.4.7.6 | The Emergency Benefit Scheme, 1939 | 240 |
| 3.4.7.7 | The Universal No-Fault Accident Insurance Scheme, 1974 | 240 |
| 3.4.8 | Sweden | 241 |
| 3.4.8.1 | The Sickness Insurance Scheme, 1880 | 241 |
| 3.4.8.2 | The Sickness and Maternity Scheme, 1891 | 241 |
| 3.4.8.3 | The Old Age, Invalidity and Death Scheme, 1913 | 242 |
| 3.4.8.4 | The Unemployment (Union related) Benefit Fund, 1934 | 242 |
| 3.4.8.5 | The Family Allowances Scheme, 1947 | 242 |

| | | |
|--------------|---|------------|
| 3.4.8.6 | The Unemployment Insurance Act, 1972 | 243 |
| 3.4.8.7 | The Employment Injury Act, 1977 | 243 |
| 3.4.8.8 | The Migration Benefit (Amendment) Act, 1979 | 243 |
| 3.4.9 | A Bird's Eye View | 244 |
| 3.5 | The International Labour organization's Conventions/Recommendation on the Social Security Schemes | 246 |
| 3.5.1 | Compliance of the ILO's Conventions in Indian Social Security Legislations | 248 |
| 3.5.2 | Implementation (Partial Ratification) of the Conventions relating to the Social Security in the Indian Social Security Legislations | 251 |
| 3.5.3 | The ILO-Indian Relations on Social Security | 252 |
| 3.5.4 | A Bird's Eye View | 254 |

The Social Security Schemes under various Statutes and International Instruments

3.1 Nature and Concept of the Social Security:

The Executive Secretary of the American Association of Social Security, Mr. Abraham Epstein was the originator of the social security²¹². The Social Security is a way of ensuring freedom from want or poverty, which is one of the formidable obstacles in the way of progress. It also implies insurance against those misfortunes to which an individual remains exposed even when the condition of society as a whole improves. In other words social security represents society's answer to the problem of economic insecurity.

The social security is one of the dynamic concepts of the modern age, which is influencing social as well economic policy. It is the security that State furnishes against the risks, which an individual of small means cannot today stand up to by himself or even in private combination with his fellow countrymen²¹³. Sir William Beveridge defined it as "The term Social Security is used to denote the security of an income to take place of earning when they are interrupted by unemployment, sickness or accident, to provide for retirement through age, to provide against loss of support by the death of another person and to meet exceptional expenditures such as those concerned with birth, death and marriage. Further he stated that it is

²¹² Haber and Cohen, Reading in Social Security, P-39

²¹³ Giri. V.V, Labour Problems in Indian Industry, 1972,P-269

designed to provide against want, diseases, ignorance, squalor and idleness²¹⁴.

The ILO has defined the Social Security as “the Security that society furnishes through appropriate organization, against certain risks to which its members are exposed²¹⁵. Finally the social security means and includes schemes and measures adopted by the state to provide relief against various hardships like, sickness, disablement, and death. This is based on the ideas of human dignity and social justice. It is the responsibility of the State to provide relief against all contingencies of life from womb to tomb. Further the Social Security seeks to compensate for disabilities, inadequate and deprivation of the established socio-economic order. It offers the underprivileged, the dignity, self-confidence, belief in just society and new means for moral, social and material development. Brief details of the Statutory Provisions at the domestic as well as at International level are discussed as under:

3.2 Statutory Protection of the Social Security Schemes: Indian Perspective

3.2.1 Provisions under the Constitution Law of India, 1950:

The Constitution of India ensures that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life set standards

²¹⁴ Lord William Beveridge, Report on Social Insurance and Allied Services, London, 1942, Part-V, P-120

²¹⁵ ILO General Approaches to Social Security 1942

for achievements before the Legislature and Executive, local and other authorities, to achieve social and economical welfare of the people²¹⁶. The Directive Principles of the State Policy under Chapter IV of the Constitution embraces principles and policies pertaining to the Social Security measures, which are to be followed by the state in future. The following Social Security Provisions are provided under the Constitution of India.

(a) To provide health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to enter vocations unsuited to their age or strength.²¹⁷

(b) Right to work, education, and public assistance in certain cases: It directs the State to ensure the people within the limit of the economic capacity and development: employment, education and, public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved wants.²¹⁸

(c) Just and human conditions of work: It directs the State to make provision for securing just and human conditions and for Maternity Relief.²¹⁹

(d) Living Wage for workers: It requires the State to try to secure by suitable legislation or economic organization or in any other way, to all workers, agriculture industrial or otherwise a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, and particular, the state shall endeavor to promote cottage industries on an individual or co-operation basis on rural area. The Article refers

²¹⁶ Article 38 of the Constitution of India

²¹⁷ Article 39 (e) the Constitution of India

²¹⁸ Article 41 the Constitution of India

²¹⁹ Article 42 the Constitution of India

to a living wage not minimum wage. The concept of living wage includes in addition to the bare necessities of life, such as food, shelter, and clothing, provisions for education of children and insurance²²⁰.

(e) Free and compulsory education for children: It requires the State to make provision within 10 years for free and compulsory education for all children until they complete the age of 14 years.²²¹ The Supreme Court in **Unnikrishan Vs State of AP**²²² held that the Right to Education up to age of 14 years is a Fundamental right within the meaning of Article 21 of the Constitution, but there after the obligation of the State to provide education is subject to the limits of its economic capacity. The 86th Constitution Amendment Act 2001 provides that the State shall endeavor to provide early childhood care and education or all children until they complete the age of 06 years. This has been necessitated as a result of making the right to education up to the 14 years of age a fundamental right.²²³

(g) Duty to raise the standard of living and improve health:

It imposes duty upon the State to raise the level of nutrition and the standard of living of its people and improvement of public health.²²⁴

(h) Free Legal Aid to economically backward class²²⁵: It directs the State to provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for

²²⁰ Article 43 the Constitution of India

²²¹ Article 45 the Constitution of India

²²² 1993,AIR, SCC 645

²²³ Under Article 45 of the Constitution of India

²²⁴ Article 47 of the Constitution of India

²²⁵ Ibid, Article 39A

securing justice are not denied to any citizen by reason of economic or other disabilities .The Supreme Court in **HM Hoskot Vs State of Maharastra**²²⁶, held that legal aid to be fundamental right under Article 21 of the Constitution, available to all prisoners and enforceable by the courts. The State is under duty to provide lawyer to a poor person and it must pay to the lawyer his fee as fixed by the court.

3.2.2 Provisions under the Workmen's Compensation Act, 1923:

Before 1923 it was almost an impossibility on the part of an insured workman to recover damage or compensation for any injury sustained by him in the ordinary course of his employment. There were occasions when the employee was liable for the same under common law for his own personal negligence. The dependents of a deceased workman could in rare cases claim damages under the Indian Fatal Accident Act, 1885, if the accident was due to the wrongful act, neglect or fault of the person who caused the death. But the system of claim of compensation changed significantly after the enactment of the WMC Act 1923. This was the beginning of Social Security Legislation in our country. Salient features of the Act as follow:

3.2.2.1 Object and Applicability of the Act:

The object of the Act is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment. The Scheme of this enactment is not to compensate the workmen in lieu of wages but to pay compensation for the injury caused.

²²⁶ AIR 1978,1548,SC

This Act extends to the whole of India. It is applied to certain categories of railway servants and workers employed in any capacity specified in Schedule II of the Act, which includes factories, mines, plantation, mechanically propelled vehicle, construction work and certain other hazardous occupations. There is no wage limit for coverage of workers under the Act. The Central and State Governments are empowered to extend the scope of the Act to any class whose occupations considered hazardous after giving three months notice in the Official Gazette.

3.2.2.2 Conditions for the payment of Workmen's Compensation:

The employer is liable to pay compensation to employees, if it falls in any of the following categories.

(a) If a personal injury is caused to a workman by accident arising out of and in course of his employment, and the compensation in accordance with the provisions of the Act.

(b) If a workman employed in any employment specified in Part A of Schedule III, contracts any disease specified there in as an occupational disease peculiar to that employment, or if a workman whilst in the service of an employers, in whose service he has been employed for continuous period of not less than 06 months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified there in as an occupational disease peculiar to the employment, or contract any disease as specified in the Part C of the Schedule III

of the Act, and the continuous period may be specified by the Central Government.

If a workman employed in any employment specified in Part C of the Schedule III contracts any occupational disease peculiar to that employment, the contracting where of is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employers, all such employer shall be liable for payment of the compensation in such proportion as the Commissioner may, in the circumstances deem just.

3.2.2.3 Limitations on payment of compensation by employers:

The employer shall not be held liable to pay compensation to workers on the following conditions.

(a) In respect of any injury, which does not result in the total or partial disablement of workman for a period, exceeding 03 days.

(b) In respect of any injury not resulting in death, or permanent total disablement caused by an accident, which is directly attributable to: -

- (i) The workman having been at the time thereof under the influence of drinks or drugs or,
- (ii) The willful disobedience of the rule expressly framed, for the purpose of securing the safety of workman; or
- (iii) The willful removal or disregard by the workman of any safety guard or other device, he knew to have been

provided for the purpose of securing the safety of workman.

(c) Same as provided by Sub section 2, 2A and 3, no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

3.2.2.4 Calculation of amount of the compensation:

The Compensation has to be paid by the employer to a workman for any personal injury caused by an accident arising out of and in the course of his employment, subject to the provisions of this Act, the amount of compensation shall be as follow:²²⁷

(a) Where death results from the injury: Amount equal to 50% of the monthly wages of the deceased workman multiplied by the relevant factor as per Schedule IV or, an amount of Rs. 80,000. Whichever is more the maximum amount of compensation for death may go up to Rs. 4.50 lakh. The amount was 2.88 lakh prior to the Amendment Act 46 of 2000. The Amendment Act 46 of 2000 Act has raised the existing wage ceiling for computation of maximum amount of compensation from Rs. 2,000 to Rs. 4,000 with effect from 08.12.2000.

(b) Where the Permanent Total Disablement result from the injury: The permanent total disablement shall be deemed to result from every injury specified in the Part I of the Schedule I or from any combination of injuries specified in Part II thereof, where the aggregate percentage of the total loss of earning capacity, as

²²⁷ Section 03 of the Workmen's Compensation Act, 1923

specified in the said Part II against those injuries, amounts to 100% or more.

There are two main features of the total disablement, first the workman become incompetent for all the work, which he was capable of performing at the time of the accident resulting in such disablement. Secondly the loss of earning capacity of such workman is 100% or more.

An amount equal to 60% of the monthly wages of the injured person multiplied by the relevant factors as per Schedule IV or an amount of Rs. 90,000, whichever is more. The maximum amount of compensation in this case may go up to Rs. 5.48 lakh, prior to Amendment Act, 46 of 2000 it was 2.74 lakh. The wage ceiling for computation of maximum amount has been fixed at Rs. 4,000, where the monthly wages of a workman exceed Rs. 4,000 his monthly wages for the purpose of calculation of compensation shall be deemed to be Rs. 4,000 only.

(c) Where Permanent Partial Disablement results from the injury: This disablement reduces the earning capacity of a workman in every employment, which he was capable of undertaking at the time of accident. Part II of Schedule I includes the list of permanent partial disablement cases.

(d) Computation of Amount of Compensation:

- (i) In case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified there in as being the percentage of the loss of earning capacity caused by that injury; and

(ii) In case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

(iii) Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so as in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

(iv) Where the temporary disablement, whether total or partial results for the injury: A half monthly payment of the sum equivalent to 25% of monthly wages of the workman, to be paid in accordance with the provisions of Sub Section (2)

The Half Monthly payment as per Sub Section (2) shall be payable on the 16th day from the date of disablement, where such disablement lasts for a period of 28 days or more or after the expiry of a waiting period of 03 days from the date of disablement where such disablement lasts for a period of less than 28 days; and thereafter half monthly during the disablement or during a period of 05 years, whichever period is shorter.

3.2.2.5 Administration of the Scheme

The Act is administered by the State Governments, who are required to appoint Commissioners for WMC Act. The Commissioners so appointed deals with settlement of disputed claims, disposal of cases of injuries involving death, and revision of periodical payments. These have been empowered with effect from 15.09.95 to impose penalty on employers who fails to pay compensation due under the Act to the injured worker within one month from the date it fell due.²²⁸ The claim of compensation be filed before Commissioner, where the workman /dependents ordinarily resides.

3.2.3 Provisions under the Employees State Insurance Act, 1948

3.2.3.1 Objects and Application of the Scheme:

The ESI Act 1948 is a pioneering measure in the field of social insurance in our country. The Act provides for certain benefits to employees in case if sickness, maternity and employment injury and to make provisions for certain other related matters. The Act extends to the Whole of India and applies to all factories, other than seasonal factories, run with power and employing 20 or more persons. The appropriate Governments are however, authorized to extend it partially or wholly to any establishment or class of establishments industrials, commercial, agriculture or otherwise. It covers persons employed directly or indirectly as also the clerical staff, but does not apply to members of the Armed Forces or to persons whose remuneration in the aggregate exceeds Rs.

²²⁸ Act 30 of 1995

7,500 a month²²⁹. The Act has also been extended to new classes of establishments, viz power using factories employing 10 or more workers and non-power using factories employing 20 or more workers, shops, theaters, cinemas, hotels, restraints, motor transport undertakings and newspaper establishments employing 20 or more persons in a number of states. The Act is being implemented area wise in a phased manner. The ESI Scheme is operated in 687 Centers situated in 25 States/Union Territories²³⁰. As on 31.03 2006, almost 79.10 Lakh employees, 2.54 Lakh employers, 13.40 Lakh insured women and about 307 Lakh beneficiaries are covered under the Scheme. The number of factories and establishments covered by the end of year (2005) had gone up to about 2, 38000.²³¹

3.2.3.2 Benefits under the Scheme:

Employers are required to notify the appropriate authorities about the number of accidents, and amounts of compensation paid. The State Government compiles these statistics and forwards them to the Labour Bureau. The details of the benefit provided under the Scheme are given below.

(a) Benefits:

Two types of social security cover are provided under the Scheme. These are Medical Care and Cash Benefits. Brief details of these benefits are shown below.

(i) Medical Care:

It is provided to the ensured persons and their family members through a vast network of Panel Clinics, ESI dispensaries and

²²⁹ With effect from 01 Apr 2004

²³⁰ www.esic.nic.in

²³¹ Ibid

hospitals generally with in the vicinity of their residential area. There are a total of 6,740 medical units, 322 Specialists Centers, 143 ESI Hospitals, and 43 ESI Annexes with a total 27,099 beds. About 5,000 beds have also been reserved in government and other hospitals at various places in our country for impatience care.²³² Super specialists are provided at the advanced medical hospitals and institutions. The Scheme bears full expenditures for providing such facilities to its clients.

(ii) Cash Benefits:

These constitute the following benefits involved payment of monetary benefits to the insured employees.

- **Sickness Benefits:**²³³

A periodical payment to any insured person in case of his sickness. Which is to be certified by a duly appointed medical practioner or by and person, possessing such qualifications and experiences as specified by the regulations of the Corporation. Condition and other details of these benefits are as mentioned below.

- **Contributory Condition:** payment for at least 78 days in the relevant contribution period.
- **Rate.** Standard benefit rate (rate not less than 50% of wages).
- **Duration:** 91 days in two consecutive benefit periods.

- **Extended Sickness Benefit:**

***Contributory Conditions:** continuous employment for a period of two years and payment of contribution for at least 156 days in four contribution period.

²³² www.esic.nic.in

²³³ Section 46 (a) of ESI Act, 1948

***Rate of Benefit:** 140% of the standard benefit rate (not less than 70% of the wages)

***Duration:** 400 days (91 days sickness benefits + 309 days extended sickness benefit) to 02 years in deserving cases duly certified by a medical board.

- **Enhanced Sickness Benefit:**

***Condition:** payment for at least 78 days in the relevant contribution periods.

***Rate:** Twice the standard benefit rate not less than full wages.

***Duration:** 07 days for vasectomy and 14 days for tubectomy extendable in cases of postoperative complication.

The employees cannot seek sickness benefits, where the provision for sick leave is made under the standing order. This was declared in a case before the High Court of AP²³⁴. The Supreme Court in the **Technological Institute of Textiles Vs its workmen**²³⁵ held that an award of 07 days sickness leave on production of a medical certificate in addition to the benefits under the ESI Act was justified.

- **Disablement Benefit:**

A periodical payment to an insured person suffering disablement as a result of an employment sustained as an employee and certified to be eligible for such payment by an specified authority under the Act. The disablement benefits are classified into two following categories.²³⁶

²³⁴ ML Kuntarao Vs Joshi Mills Ltd, Warnagal 1970, Lab, IC AP.

²³⁵ 1995, 2, LLJ150, SC

²³⁶ Section 46 © of the Act,

***Temporary Disablement Benefit:** Where a person who sustained temporary disablement for not less than 03 days (excluding the day of accident) shall be entitled to periodical payment at the following rate. Rate of Benefit is 140% of the standard sickness benefit rate (not less than 70% of the wages) till the incapacity lasts.

***Permanent Disablement Benefit:** Where a person who sustain permanent disablement whether total or partial shall be entitled to periodical payment at the rate of 140% of the Standard Sickness Benefit rate. Actual amount depends upon the loss of earning capacity of workers under Part I of Schedule II for permanent Total disablement and Part II of Schedule II for partial permanent disablement and determined by a Medical Board under the Act. The duration of this benefit is for lifetime.

***Occupational Disease Disablement:** Any occupational disease while working in any of the employments specified under the Schedule III, shall be deemed to have contracted an employment injury. The disease should be directly attributable to a specific injury arising out of and in the course of employment. The Actual amount of compensation depends upon the loss of earning capacity of the worker as may be determined by a medical board under the Act²³⁷

- **Maternity Benefit:**

Periodical payments to an insured workman in case of confinement or, miscarriage, or sickness arising out of

²³⁷ Ibid, Section 52A

pregnancy, confinement, primitive birth of child, or miscarriage, such woman being certified to be eligible for the benefit by an specified authority under the Act²³⁸. The details of contributory conditions and benefits are as below.

***Contributory Condition:** Payment of contribution of 70 days in immediately proceeding two consecutive contribution periods.

***Rate:** Double the Standard Benefit rate (not less than the full wages)

***Duration:** 12 weeks of which not more 06 weeks can precede the expected date of confinement and 06 weeks after the expected date of confinement. For Miscarriage 06 weeks and additional One month for sickness arising out of pregnancy related confinement, premature birth of child or Miscarriage.

- **Dependents Benefit:**

A periodical payments to dependents of an insured person who dies as a result of an employment Injury or occupational disease under the Act, as re entitled compensation under this Act. Rate of benefits is 140% of the stranded sickness benefit rate, but not less than 70% of the wages to be divided among the dependents in the prescribed ratio.

- **Funeral Expenses:**

A payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person or, where the insured person did not have a family or was not living with his family

²³⁸ Ibid, Section 46 (b)

at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person.²³⁹

The Actual expenditure on funeral not to be exceed Rs. 2,000

- **Rehabilitation Allowances:**

For each day on which insured person remains admitted in Artificial Limb Center for fixation /repair or replacement of artificial limb. The benefit rate is double the standard sickness benefit rate but not less than full wages.

- **Medical Benefit to retired and disabled insured person.**²⁴⁰

Retired person who leaves employment on attaining age of superannuation after being insured far not less than 05 yrs, and his spouse on payment @ Rs. 10 per month in lump- sum for one year in advance shall receive the medical benefits. Disabled insured person, who ceased to be in an insurable to receive medical benefits for himself and his spouse, till he attains the age of superannuation

- **Vocational and Rehabilitation:**

Insurable employment up to 40% permanent disablement and should be below the age of 45yrs. It is provided till the training complete at a recognized center/institute.

- **Medical Bonus:**

It is paid o the insurable person/souse at the places where necessary medical facilities are not available under the ESI Scheme. Rupees 250 is paid as a lump sum, towards

²³⁹ Section 46(f) of the Act

²⁴⁰ Rule, 60&61 of the ESI Central Rule, 1950

confinement expenses to an insured workman, wife of insured person.

- **Unemployment Benefit**²⁴¹

In pursuance of the powers conferred upon it under Section 19 of the ESI Act, 1948 (34 of 1948), the Employees' State Insurance Corporation, on 27th day of February, 2005, at its 131st meeting held at New Delhi, resolves to introduce an unemployment allowance scheme from 1st day of April, 2005. The scope, eligibility and other conditions of the scheme are as under:

***Scope of the Scheme:** An insured person going out of insurable employment involuntarily on or after 1st April, 2005, on account of closure of a factory or establishment, retrenchment, or permanent invalidity arising out of non-employment injury, after being in an insurable employment and contributed under the scheme for five or more years, shall be entitled to claim unemployment allowance for a maximum period of 6 months during his/her entire service.

For the purpose of the scheme, (i) The terms, 'closure' and 'retrenchment' shall have the meanings assigned to them under the Industrial Disputes Act, 1947 (14 of 1947), and according to provisions of sub-section- (24) of Section-2 of the ESI Act, 1948; and (ii) The term "permanent invalidity" shall mean permanent disability arising out of non-employment injury of 50% or more, as certified by a Medical Board constituted by the Central or State Governments.

²⁴¹ Rajiv Gandhi Shremik Kalyan Yojana

*** Eligibility conditions:** The person should have been, an insured person, under the ESI Act on the date of loss of insurable employment, on account of closure of the factory or establishment, retrenchment, or permanent invalidity arising out of non-employment injury. Insured person should have contributed under the ESI Scheme, for a minimum period of five years prior to loss of employment.

The insured person should qualify for Sickness Benefit in the benefit period corresponding to last four Contribution periods immediately preceding the date of unemployment. Unemployment Allowance shall cease to be payable from the date the insured person gets re-employed elsewhere. Only the insured person, who becomes unemployed as stated above, on or after 1st April 2005, shall be entitled to receive unemployment allowance. The unemployment allowance can be availed of in one spell or in different spells of unemployment provided that each such spell shall not be less than one month. The unemployment allowance shall not be combined with sickness benefit, maternity benefit or disablement benefit for temporary disablement for the same period. The insured person in receipt of any of these benefits during the same period shall, however, be entitled to choose which benefit he/she wishes to avail of. The payment of unemployment allowance shall be subject to the provisions of Section 61 of the ESI Act, 1948.

***Rate of Unemployment Allowance:** The daily rate of unemployment allowance shall be the “standard benefit rate” as specified in the table of Standard Benefit Rates under Rule-54 of ESI (Central) Rules, 1950, corresponding to the average daily wage drawn by the said insured person

during the last four completed contribution periods, immediately preceding the date of unemployment.

*** Duration of Unemployment Allowance:** The maximum period, for which an insured person shall be entitled to draw unemployment allowance during his entire insurable employment, shall be six months. The allowance can be availed in one spell or in different spells of not less than one month.

*** Medical Care:** During the period for which a person is entitled for unemployment allowance, he shall also be eligible for medical care for himself and his/her family from the ESI Dispensaries, ESI panel clinics and ESI hospitals to which he/she was attached prior to the date of loss of employment, based on a separate authorization by the Branch Manager making the cash allowance payment.

***Procedure:** The allowance shall be payable in the form of a monthly payment by the Branch Office of the ESIC where he/she was registered prior to loss of employment, on submission of a claim in the prescribed form duly supported by relevant documents. The claim shall be subject to verification and fulfillment of eligibility conditions.”

3.2.3.3 Contributions under the Scheme:

The ESI Scheme is financed by the ESI Fund raised through contribution from employers and employees, and grants/donations and gifts from the Central Government and State Government, local authorities or any other individual or body. The Employers Contribute 4.75% of the

wage payable to the employees and the employees contribute at the rate of 1.75% of their wage towards the scheme. The employees who are in receipt of average daily wages up to Rs 25 per day are not required to contribute their share in respect of such employees. The State Governments contribute a minimum of 12.5% of expenditure on medical care.

3.2.3.4 Administration of Scheme

The administration of the ESI Scheme framed under the Act, has been entrusted to the ESI Corporation, a corporate body, consisting of the representatives of the Central, and State Governments, employees, employers, medical professional and the members of the Parliament. The Corporation consists of Standing Committee, Medical Council, ESI Court etc. 17 Regional Offices, 10 Sub Regional Offices, 627 Local Offices, 219 Pay Offices and 343 Inspection Offices were functioning in the States and Union Territories on 31st March, 2001²⁴². During 2002-03, the Scheme was implemented in 15 New Areas covering about 25,000 additional employees.

3.2.4 Provisions under Employees Provident Fund and Miscellaneous Provisions Act, 1952

3.2.4.1 Application of the Act:

The purpose of the Act is to provide for the institution of Provident Funds, Pension Fund, and Deposit Linked Insurance Fund for employees in factories and other establishments. This Act extends to the Whole of India except the State of J&K. It applies to factories specified in Schedule

²⁴² India Labour Year Book 2002-03, Page- 177

I, and in which 20 or more persons are employed. The Act also applies to any other establishments employing 20 or more persons or class if such establishment that the Central Government may by notification in the Official Gazette specify in this regard. The wage ceiling for coverage under the EPF Scheme has been enhanced from Rs. 5,000 to Rs. 6,500 per month with effect from 01.06.2001.

3.2.4.2 Rate of contributions under the Scheme:

The normal rate of contributions payable by the employers and employees prescribed under the Act is 10% of the wages of the employees²⁴³. The Act, also empowers the Central Government to enhance, if deemed fit, the rate of contribution to 12% of wages in respect of any industry or class of establishments. The Central Government has so far enhanced the rate of contribution to 12 % in respect of 172 Categories of establishment. The minimum rate of PF contribution of 10% is applicable to the 05 Industries only-i.e. Brick, Bidi, Jute, Coir, and Guargum.

3.2.4.3 Advance from the Statutory Fund:

The Scheme provides for financial assistance by allowing partial withdrawals to subscribers in situations like, illness, and invalidation, and to provide funds to enable them to discharge their social responsibilities like marriage of sister/brother, daughter/son or higher education of children or construction of dwelling house. As on 31 March 2003, the total investment of the PF accumulations amounted to Rs. 108510.14 Crore out of which Rs. 58627.60 Crore and 49882.54 Crore pertained to unexemplified and exempted establishments respectively. Financial

²⁴³ with effect from 01.05.1997

assistance was also provided to the members by allowing partial withdrawals by setting 4.62 lakh such cases and disbursing an amount of Rs. 1,373.73 Crore. Further 18.31lakh claims under the Act were settled and an amount of Rs. 6621.34 Crore was disbursed²⁴⁴.

3.2.4.4 The Employees Deposit Linked Insurance Scheme, 1976:

(a) Application:

This Scheme came into force from 01 August 1976. It is applicable to all factories/establishments to which EPF&MP Act 1952 applies. All the PF members- employees, both in exempted and unexempted establishments, are covered under this Scheme.

(b) Contribution:

The employees are not required to contribute to insurance fund. The employers are required to pay contribution to it at the rate of 0.5% of the pay of the employees who are PF subscribers. The Central Government also contributes to Insurance Fund at the rate of 0.25% of the pay in respect of the covered employees. The employers are also required to pay administration charges to the fund at the rate of 0.01% of the pay drawn by the employees, subject to a minimum of Rs.02 per month and inspection charges at the rate of 0.02% of the pay of employee members. The Central Government also pay an amount @ 0.005% for administrative charges, subjective to Re 01 per month, of employees members pay.

(c) Benefits:

The person covered under the Act are entitled to receive to an additional amount equal to the average balance in the PF account of the deceased during the preceding 12 months, wherever the average PF

²⁴⁴ www.epfindia.nic.in

balance is less than Rs. 25,000. In case where average PF balance of preceding 12 months exceeds Rs.25, 000, the amount of benefit shall be Rs.25, 000 plus 25% the amount in excess of Rs.25, 000, subject to a maximum of Rs. 35,000. The Government has enhanced the ceiling on maximum amount of the benefit from Rs.35, 000 to Rs.60, 000 w e f 13.06.2000. On 31.3.2003, 21000 claims were settled and an amount of Rs.54.53 Crore was disbursed. A sum of 3485.22 Crore was lying invested on 31.3 2003²⁴⁵.

3.2.4.5 The Employees Pension Scheme, 1995:

(a) Application:

This scheme is compulsory for all the persons, who were members of the Family Pension Scheme, 1971. This Scheme was introduced w e f 16.11.1995, and compulsory for the members' of the PF Scheme from that date. The PF Subscribers, who were not members of the Family Pension Scheme, have an option to join the scheme w. e .f. 01.04.1993.

(b) Eligibility:

Minimum 10 yrs contribution service is required for entitlement to pension. Normal superannuation pension is payable on attaining the age of 58 yrs. Pension on discounted rate is also payable on attaining the age of 50 yrs, where pensionable service is less than 10 yrs, the member has an option to remain covered for Pensionary benefits, till 58 yrs of age or claim return of contribution/withdrawal benefits.

(c) Contribution:

Neither the employees nor the employer is required to make additional contribution. The employer's share of PF contribution

²⁴⁵ Ibid

representing 8.33% of the wage is being diverted to the said fund. The Central Government is also contributing to the Pension Fund @ 1.16% of the wages of the employees. The Pension Fund is required to be evaluated through qualified Actuary on annual basis. Based on the valuation results, the benefit quantum is revised.

(d) Benefits:

(i) Monthly Pension Scheme: This Scheme provides for payment of monthly pension in the following contingencies.

- Superannuation on attaining the age of 58 yrs
- Retirement;
- Permanent Totals Disablement;
- Death during service;
- Death after retiremant/superannuation/Permanant disablement
- Children Pension;
- Orphan Pension.

The amount of monthly pension will vary from member to member depending upon his pensionable salary and pensionable service. The Pensionable Salary will be average of last 12 months pay. The Formula for calculation of monthly member's pension is as follows.

$$\text{Pensionable Salary X (Pensionable Service +02)}$$

70

(ii) Disablement Pension: If the member is permanently and total disabled after having contributed to the pension fund at least for 01 month, he will be entitled to pension as per the formula prescribed in Scheme subject to a minimum of Rs. 250.

(iii) Family Pension: The rate of minimum widow pension is Rs. 450. Pm. The maximum may go up to Rs. 2,500 .pm payable as normal member's pension on completion of nearly 33 yrs service. Family Pension up to Rs. 1750, pm is also payable to the widow of the member who has contributed only for one month to the pension fund; the family is also entitled to children pension @ 25% of widow pension for each child subject to minimum Rs.150, for two children up to the age of 25 yrs. The Orphan Pension @ 75% of the widow pension payable to orphans subject to the minimum of Rs. 250, pm per orphan.

(iv) Option for Return on Capital: Under the Scheme, the employees have an option to accept the admissible pension or reduced pension with return of capital. In the case of the employee opting for 10%, less pension than the actual entitlement, the scheme provides for return of capital equivalent to 100 times of the original pension in the event of death of the pensioner. In addition the widow and two children will continue to get pension for life or up to the age of 25 yrs a as the case may be.

The beneficiaries of the Employees Provident Fund Scheme continue to get benefit under the scheme. As on 31.03.2003 there were 5,76,612 members, 3,48,276 spouse, 23521 children, 4,260 orphans and 4,413 nominee getting pension under the Scheme. The total amount disbursed among the pensioners during year was 11257.81 Crore. 50.05 lakhs claim of monthly pensions retirement cum withdrawal, refunds, and life assurance benefits were settled during the year.²⁴⁶

²⁴⁶ Ibid,

3.2.4.6 Administration of the Provident Fund Schemes

The EPFO is in charge of all the three Schemes. Central Board of Trustees, a tripartite body, consisting of the Chairman, nominees of the Central and State Governments and employees and employers, administers these Schemes. The Central PF Commissioner is the Chief Executive Officer of the organization and Secretary to the Central Board of Trustees. He is assisted by the Regional PF Commissioners, one in each state and in Delhi. The Regional Committees advise the Central Board on matters connected with the administration of the scheme in their respective states. PF Inspectors are appointed to carry out inspection and to perform an advisory role vis-à-vis the employers and workers in different covered establishments. As on 31.3.2003, 344508 commercial establishments, with 394.98 lakh members are covered under these schemes. The organization functions with its 21 regional Offices, 87 sub regional Offices/sub Accts offices, 12 service centers, and 163 district offices throughout the country.²⁴⁷

3.2.5 Provisions under the Maternity Benefit Act, 1961

3.2.5.1 Application and Scope:

The purpose of this Act is to regulate the employment of women in certain establishments for certain period before and after childbirth and to provide for maternity benefit and certain other benefits. This Act extends to the whole of India. The Act applies to every establishment being a factory, plantation, or mine including any such establishment belonging to Government and to every establishments where persons are employed or

²⁴⁷ Ibid

were employed of equestrian, acrobatic, and other performances. The Act was amended by the Amendment Act 1988;²⁴⁸ to covered every shops and establishments employing 10 or more person. The Act specially excludes the applicability of the provisions of the Act to which provisions of the ESI Act apply for the time.

3.2.5.2 Benefits under the Scheme:

The Act provides the following benefits to the women employees.

(a) Maternity Benefit:

A woman is entitled the benefit at the rate of the average wage for the period of her actual absence. The maximum period for which a woman can get benefit is 12 weeks, of which of this 06 weeks must be taken prior to the date of delivery of the child and 06 weeks following that date. No woman shall be entitled maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than 80 days in the 12 months immediately preceding the date of his expected delivery.²⁴⁹

(b) Leave of miscarriage:

In case of miscarriage or medical termination pregnancy (MTB), a woman shall on production of such proof as may be prescribed, be entitled to leave with wages at the rate of Maternity Benefit for a period of 06 weeks, immediately following the day of her miscarriage or as the case may be, her medical termination of pregnancy.²⁵⁰

²⁴⁸ With effect from 10th Jan 1989

²⁴⁹ Section 05 of the Maternity Benefits Act, 1961

²⁵⁰ Ibid, Section 09

(c) Leave for Illness arising out of pregnancy:

A woman in this case, shall on production of such proof as may be prescribed, in addition to the period under Section 05, to leave with wages at the rate of Maternity Benefit for a maximum period of 30 days.

(d) Payment of Bonus:

Every woman entitled to benefit under the Act shall also be entitled to receive from her employer a medical bonus of Rs. 250. If no pre-natal confinement and post –natal care is provided for by the employer free of charge.

(e) Nursing Break:

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work, two breaks of the prescribed duration for nursing the child until the child attains the age of 15 months.

(f) Leave with wages for Tubectomy operation:

In case of tubectomy operation a woman on production of such proof shall be entitled to leave with wages at the rate of maternity benefit for a period of 02 weeks immediately following the day of her operation.²⁵¹

3.2.5.3 Administration of the Scheme

The Central Government is responsible for administration of the provisions of the Act in mines, and in the Circus Industry, while the State Governments are responsible for administration of the Act, in factories,

²⁵¹ Ibid, Section 9A

plantations and other establishments. The Central Government has entrusted the administration of the Act to the Chief Labour Commissioner, in respect of the Circus Industry and to Director General of Mines Safety in case of the Mines. The Government has approved a proposal of extension of the provisions of the Maternity Benefit to the woman employed in agriculture and construction in Madhya Pradesh²⁵².

3.2.6 Provisions under the Payment of Gratuity Act, 1972

3.2.6.1 Purpose and Application of the Scheme:

The Act provides for a scheme of compulsory payment of gratuity to employees engaged in factories, mines, oil fields, plantation, ports railway companies, motor transport undertaking, shops or other establishments, to other employing 10 or more employees on any day of the preceding 12 months. The Act extends to whole of India except of State of J&K (Plantation). All the employees, including managers and supervisors are made legally entitled for gratuity. (W.e.f May 1994). The Act was amended in May 1994 scraping the eligibility wage ceiling for the application of the law. The Provisions of this Act are extended to employees employed in societies/ trust employing 10 or more person. The ceiling on the Act was enhanced from 01 lakh to 3.50²⁵³.

²⁵² India Labour Year Book, 2002-03, P-182

²⁵³ With effect from 24. 09 1997

3.2.6.2 Benefits under the Scheme:

The gratuity shall be payable to an employee on the termination of his employment after he has, rendered continuous service for not less than 05 yrs;

- (i) On his Superannuation or,
- (ii) On his retirement,
- (iii) On his death or disablement due to accident or disease.

For every completed year of service or part thereof in excess of 06 months, the employer shall pay gratuity to employees at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned. The appropriate Government may by notification appoint any officer to be a Controlling Authority who shall be responsible for the administration of this Act, and different controlling authorities may be appointed for different areas. In Maharastra, the Labour Courts in different localities are notified as controlling authorities and the President, Industrial Court is an appellate authority under the Act²⁵⁴.

²⁵⁴ Sharma. A.M, Aspects of Labour Welfare and Social Security in India,

3.3 International Instruments and the Social Security Schemes

3.3.1 Human Rights aspect related to the Social Security.

The Universal Declaration Of Human Right,1948, International Covenant on Economic, Social, and Cultural Rights 1966 and the International Covent on Civil and Political Rights, (ICCPR) 1966 have provided the guidelines for the human rights at the World. These not lonely helped the nations to implement the related provisions of human rights in their respective nations for the protection of unprivileged peoples but also it has ensure the uniformity in the provisions at the world level. This was never seen before on the human rights. The UN Declaration of Human Rights was the first step in the process of human rights protection. The International Covenant on Economic, Social, and Cultural Rights 1966 is a comprehensive code on the human rights in the fields of social, economic, and cultural. The Covenant has provided a numbers of social security rights to the labourers as well as the citizens of the nations. The International Covenant on Civil and Political rights, 1966 described about the important human rights as human dignity, right to life, right to enjoy healthy life etc. A brief detail of the subject matters of these covenants relating to the Social security is given below.

3.3.1.1 The Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights is the basic international pronouncement of the inalienable and invaluable rights of all members of the human family. This may be regarded as the first landmark

in the contemporary history in the development of the concept of human rights. The UDHR was adopted by the UN General Assembly on 10th December, 1948 at its meeting in Paris. It sets forth the basic civil, economic, political and social rights and freedom of every person. The provisions of the UDHR can be classified into four following categories.

- General (Article 1 and 2)
- Civil and political rights (Articles 3-21)
- Economic, social and cultural rights
- (Articles 22-27), Concluding. (Article 28- 30).

The Research analyses the provisions of the UDHR on the social and cultural rights and relevant subject matters on the subject of research are taken into consideration; which are as follow.

(a) Right to Social Security:²⁵⁵

Everyone as a member of society has the right to social security and is entitled to realization through national effort and international cooperation and in accordance with the organization and resources of each state of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

(b) Right to Work ²⁵⁶

(i) Everyone has the right to work to free choice of employment to just and favorable conditions of work and to protection against employment.

(ii) Everyone, without any discrimination has the right to equal pay for equal work.

²⁵⁵Article. 22 of the UDHR, 1948

²⁵⁶ Ibid, Article. 23

(iii) Everyone, who works, has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented if necessary by other means of social protection.

(iv) Every one has the right to form and to join trade unions for the protection of his interest.

(c) Right to Standard living and Health Care²⁵⁷

(i) Everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, housing, and medical care and necessary social services. And the right to security in the event of unemployment, sickness, disability, widowhood, Old age or other lack of live hood in circumstances beyond his control.

(ii) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

3.3.1.2 International Covenant On Economic, Social And Cultural Rights, 1966

The ICESCR 1966 was adopted by the General Assembly in 1966. It required 35 ratifications to enter into force. These requirements were deposited on 03 October 1976 and the Covenant entered into on 03 Jan 1977. The Covenant has a preamble of 31 Articles divided into 05 parts. This Covenant contains a longer and much more comprehensive list of economic, social, and cultural rights than the UHDR Part III of the

²⁵⁷ Ibid, Article. 25

Covenant from Articles 06 to 15 contains a longer and much more comprehensive catalogue of economic, social and cultural rights than in UDHR. The followings are the brief details of the subject matter of the covenant related to the economic, and social rights

(a) Right to Work:²⁵⁸

(i) The State parties to the present Covenant recognize the right to work, which includes right of everyone to the opportunity to gain his living by work which he freely chosen or accepts, and will take appropriate steps to safeguard this right.

(ii) The steps to be taken by a state party to the present covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic social and cultural development and full and productive employment under safe guarding fundamental political and economic freedoms to the individual.

(b) Just and favourable conditions of work:²⁵⁹

The State parties to the present covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work, which ensure, in particular.

(i) Remuneration, which provides all workers as a minimum, with

(ii) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular woman being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

²⁵⁸ Article 06 of the ICESCR, 1966

²⁵⁹ Ibid, Article 07

(iii) A decent living for themselves and their families, in accordance with the provisions of the Covenant are as Safe and healthy working conditions, equal opportunities for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and compliance, rest and leisure and reasonable limitation of working hours and periodical holidays with pay as well as remuneration for public holidays.

(b) Right to the Social Security:²⁶⁰

The state parties to the covenant recognize the right of everyone to social security including social insurance.

(c) Protection and assistance to family:²⁶¹

(i) The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and education while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

(ii) Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mother should be accorded paid leave or leave with adequate social security benefit.

(iii) Social measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons or parentage or other conditions.

²⁶⁰ Ibid, Article 09

²⁶¹ Ibid, Article 10

Children and young person should be protected from economic and social exploitation.

(e) Right of adequate standard of living: ²⁶²

The state parties to the present covenant recognizes the right of everyone to an adequate standard of living for himself and his family, including food, clothing, and housing and to the continuous improvement of living conditions. The state parties will take appropriate steps to ensure the realization of this right recognizing to this effect the essential importance of International Cooperation based on free consent.

(f) Right of enjoyment and Health Care: ²⁶³

(i) The state parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

(ii) The steps to be taken by the state parties to the present covenant to achieve the full realization of this right shall include those necessary for the provisions for the reduction of the still birth rate and infant mortality and for the healthy development of all child; the improvement of all aspect s of the environment al and industrial hygienic, the prevention, treatment, and control of epidemic, endemic, occupational and other disease, the creation of conditions, which would assume to all medical service and medical attention in the event of sickness.

²⁶² Ibid, Article 11

²⁶³ Ibid, Article 12

(f) Right to Development of Human personality and dignity:²⁶⁴

The state parties to the present covenant recognize the right of everyone to the education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial ethnic or religious groups, and further the activities of the United Nation for the maintenance of peace.

(h) Right to Free Education:²⁶⁵

The state parties to the present covenant which at the time of becoming party, has not been able to secure in its metro territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years to work out and accept a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

²⁶⁴ Ibid, Article 13

²⁶⁵ Ibid, Article 14

3.3.1.3 International Covenant on Civil and Political Rights (ICCPR), 1966

The ICCPR was adopted by the General Assembly in 1966. This Covenant required 35 Members' ratification, which were deposited on 23 Dec 1975 and the Covenant entered in to force on 23 Mar 1976. India acceded to this Covenant on 10th Apr 1979 and it became effective on 10th July 1979. The Covenant has a preamble and 53 articles divided into Six Parts. This Covenant contains a longer and much more comprehensive list of civil and political rights than the Universal Declaration of Human Rights. All the political and civil rights enshrined in the Charter have been drafted with specificity. The researcher has thoroughly examined the subject matters and considered the following Articles are concerned with study.

(a) Right to Social, Economical and Cultural Development:²⁶⁶

- (i) All peoples, have the right of self-determination, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.
- (ii) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation; based upon the principal of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

²⁶⁶ Article 01 of the ICCPR, 1966

(b) Equal Civil and Political rights of Men and Women:²⁶⁷:

The State parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

(c) Right to Life:²⁶⁸

Every human being has the inherent right to life. Law shall protect the right. No one shall be arbitrarily deprived of his life.

(d) Right Against Exploitation: ²⁶⁹

(i) No one shall be held in slavery, and slave trade in all their forms shall be prohibited.

(ii) No one shall be held in servitude.

(iii) No one shall be required to perform forced or compulsory labour.

(e) Right to Liberty and Security of Person: ²⁷⁰

Every one has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

(f) Respect to Human Dignity: ²⁷¹

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

²⁶⁷ Ibid, Article 03

²⁶⁸ Ibid, Article 06

²⁶⁹ Ibid, Article 08

²⁷⁰ Ibid, Article 09

²⁷¹ Ibid, Article 10

(g) Right Against Unlawful interference with Privacy:²⁷²

(i) No one shall be subjected to arbitrary on unlawful interference with his privacy, family, home or correspondence and nor to unlawful attacks on his honour and reputation.

(ii) Every one has the right to the protection of the law against such interference or attack.

(h) Right to Freedom of Religion:²⁷³

(i) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship; observation, practice and teaching.

(ii) No one shall be subjected to coercion, which would impair his freedom to have or to adopt a region or belief of his choice.

(i) Right of Peaceful Assembly:²⁷⁴

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedom of other.

(j) Right to Freedom of Association:²⁷⁵

Everyone shall have the right to freedom of association with others including the right to form and join Trade Unions for the protection of his interests.

²⁷² Ibid, Article 17

²⁷³ Ibid, Article 18

²⁷⁴ Ibid, Article 21

²⁷⁵ Ibid, Article 22

(k) Family Protection by the Society and States:²⁷⁶

The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

(l) Right Against Discrimination:²⁷⁷

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state.

(m) Right to Opportunity in Public Service:²⁷⁸

Every citizen shall have the right and the opportunity, without any of the distinction as mentioned in Article 2 and without unreasonable restrictions. (a) To take part in the conduct of public affairs, directly or through freely chosen representatives. (c) To have access, on general terms of equality to public service in his country.

(n) Equality before Law:²⁷⁹

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other states.

²⁷⁶ Ibid, Article 23

²⁷⁷ Ibid, Article 24

²⁷⁸ Ibid, Article 25

²⁷⁹ Ibid, Article 26

3.4 International Social Security System: A Comparative study of various Countries

The origin of the social security could be traced to ancient times. Britain had social assistance on the poor laws of the Elizabethan period. The Act of 1601 established the compulsory assessment for the relief of the poor in the country. Overseas of the poor were to be appointed in every town, who were to raise taxation for the old aged or infringed or unemployed people. During the nineteen-century, few countries like Germany, Austria, and Great Britain introduced quite a numbers of Social Security Schemes.

During 19th century, the majority of industrialist countries observed the necessity of the social security. The workers demanded certain social security protections, which were recognized and supported by various organizations like ILO, and ISSA. The developed countries, followed by developing countries, initially adopted it. This slow progress was due to social, economic, and political conditions prevailed in these countries.

The ILO provided certain guidelines in the forms of Conventions on the subject. The importance of social security was recognized by the world. Initially it was started by the USA²⁸⁰ and followed in New Zealand in 1938, Atlanta Charter in 1941, and ILO's Conventions on Minimum Standard of Social Security in 1952. Over the years more and more countries have been operating social security programs. Most of the countries have made various provisions on social security like; old aged benefits, maternity, employment injury, sickness, and unemployment

²⁸⁰ Social Security Act, 1935

benefits. These measures generally provide cash in form of compensation and other medical benefits for workers and their dependents. The importance of the social security has been recognized in developing countries as well as developed nations. But the protections are provided according to social, economical, and political scenario prevailing in the countries. Some of the highlights of the past and present statutory social security provisions in some developed and developing countries are mentioned below.

3.4.1 The United States of America.

The Social Security Act 1935 was the landmark in the history of the social protection movement. It was the beginning of new era in the social security movement. The process has been continuing and the required provisions are amended according to the need of the people and conditions. A brief detail of social security provisions provided in the country is given below²⁸¹.

3.4.1.1 The Social Security Act, 1935:

This system was introduced in the USA in 1935 on the recommendations of the Committee on Economic Security initiated by the former President Roosevelt on 08 June, 1934. The basic features of Social Security Act, 1935 are mentioned below.

- (a) The Act provided Federal Grants to the states for three forms of public assistance to the needy, aged, blind and dependent children,
- (b) It enabled states to enact unemployment insurance laws and expand their employment services,

²⁸¹ www.issa.gov/

- (c) It set up a Federal System of old age insurance for persons working in industry and commerce.
- (d) It provided additional Federal Funds for the extension of state public health and rehabilitation facilities under the supervision of the US Public Health Service and for the Vocation Rehabilitation Service and for the development of the state maternal and child health and welfare programs under the supervision of the Federal Children's Bureau.
- (e) The Federal Government administered the Federal old age insurance. All other programs provided for the stated to administer them with financial aid from Federal Government.
- (f) The casual agriculture and domestic employment and limited self-employment were excluded from the scope of the Act.
- (g) The sources of the funds were 6.2 % by insured persons of their earnings, 12.4% by self employed, employer to pay 6.2% of the payroll and the government to pay whole cost of means tested allowances.
- (h) Old age Pension was provided to all persons aged over 65years of age. The age would be gradually increased to 76 years over the period of 2000-27.

3.4.1.2 The Social Security Act 1939:

The Social Security Act, 1935 was amended in 1939 upon the recommendations of the Social Security Board and the Advisory Council on Social security. The basic features of the Act are.

- (a) The Old age insurance system extended to include monthly survivors benefits to widows, children and dependent parents, changing the character of the benefits from an individual basis to family basis.

- (b) The beginning of payment of benefits, started in 1940 instead of 1942.
- (c) The contributions to the system were frozen at 01 % each of employer and employees.
- (d) The Federal Old Age and Survivors Insurance System was extended to seamen, bank employees and employed person aged 65 or over.
- (e) The exclusion of agricultural labourers was broadened so as to exclude an additional 600,000 individuals from the protection of both insurance systems.
- (f) Additional Federal Aid was provided to the States under the various assistance, health and welfare programs.

3.4.1.3 The Social Security Act, 1946:

The House of Representatives Committee On ways and Means held extensive hearing on social security in 1946. The Committee's technical staff issued a report on "Issues in Social Security". On the basis of the report and the hearings the Committee reported out stopgap legislation until it could go into various problems in more detail. The recommendations of the Committee were taken into consideration under the Act. The 1946 Act contained the following provisions.

- (a) The Federal Old Age and Survivors Insurance provisions were amended by the provisions with respect to veterans who die within 03 years after discharge, In general this guarantees survivors of veterans the same survivors insurance benefit they would have enjoyed had the veterans died fully insured under the insurance program, with not less than \$ 10, per month average wages. The guaranteed insured status is not available when the survivors are entitled to compensation from the veterans' administration.

(b) The Federal Unemployment Tax Act of the Internal Revenue Code was amended so as to include maritime employment and the states were authorized under specified conditions to cover maritime employment under the state unemployment insurance laws. Because benefits under the regular state coverage, newly established as a result of the law, were not payable immediately the law also provided for the payment of benefits at Federal expense during temporary period up to Jun 30, 1949, under a new title XIII of the Social Security Act. (Reconversion Unemployment Benefits for Seamen.)

(c) Employer and employee contribution rate for old age and survivors insurance were frozen at 01% again for 1947.

(d) The amount of federal grants to the states under title V of the social Security Act (maternal and child health, crippled children and child welfare) was increased from \$ 11,200,000 annually to \$ 22000,000. The unemployment insurance was permitted to withdraw contributions from the federal unemployment trust fund and use that to finance state disability insurance benefits.

(e) Increased federal funds to the states for the 15 months period October 01, 1946 to December, 31st, 1947 were provided under the public assistance titles of the social security Act by (i) increasing the maximum federal contribution from \$20 a month from the aged and blind to \$25 and for dependent children from \$9 for first child and \$ 6 for each additional child to \$ 13.50 and \$ 10, respectively and (ii) Increasing the federal share of state assistance payment from one-half to all state expenditures up to \$ 40 per individual for the aged and the blind and \$18 for the first child and \$12 for each

additional child ,to two-thirds of all state expenditures to an average of \$ 15 for aged and blind and one-half of such additional expenditures up to \$45 for an individual , and to two-thirds up to an average of \$9 per child and one half of such expenditures up to \$24 for one child and \$ 15 for each additional child.

3.4.1.4 The Social Security (Amendment) Act, 1947:

The Congress amended the act to freeze the old age and survivors insurance contributions at 01% each on employers and employees for 1948, and 1949, 1 ½% each for 1949 and 1950 and 02% thereafter; to continue the George Loan Fund for unemployment insurance until, 01 Jan, 1950 and to continue the 1946 increase for public assistance³ until Jun, 30, 1950.

3.4.1.5 The Social Security (Amendment) Act. 1950:

The Social Security Program was extended to cover farm and household employees and other persons.

3.4.1.6 The Sickness and Maternity Provisions, 1965:

(Health for aged and Health Insurance for disabled).

These enactments provides health insurance plans covering all persons over 65 years and who have been disabled for at lest 02 years. It also provides special notional systems for rail mal employees (cash benefits) and medical benefits by federal state system. The minimum insured wages for cash benefits to range from \$ 150 to \$ 4020 in the last year. The maximum earning for the contribution purposes was fixed at \$ 1,25,000, annually. There were also provisions of cost of hospitalization benefit for not insured person was borne by the- government. The employees and employers were also contributed for cash as well as medical benefits.

3.4.1.7 The Medical (Health Insurance for Aged and Disabled) Social Security Act, 1965:

The Medicare (Health Insurance for aged and disabled) of the Social Security Amendment of 1965 established two related contributory health insurance plans covering virtually all persons aged or older. The cash benefits provisions of the programs are designed to replace the income that is lost when a worker retires, become severely disabled or dies. The responsibility for administration of the SMI (Supplementary Medical Insurance) pays of the costs of physician's services, out patients hospital services and other related medical and health services for voluntarily insured, aged, and disabled individuals. The responsibility for administration of these programs (HI, MI, and SMI) was transferred from the social security administration to the Health Care Financing²⁸²

3.4.1.8 The Employee Retirement Income Security Act, 1974.

This enactment provides for union-negotiated welfare plans to cover health insurance supplementary benefits for retirees, laid off, employees and a host of other benefits, financed by the employer. Major legislative changes were introduced on 21 Dec 1977. The law imposed high social security contributions. The legislation was discussed to meet the financial problems facing the social security system. The benefit amounts would be an average 05 percent lower than those paid previously due to the revision of the benefit formula. However, it provides improved benefits for retirees over 65 yrs of age, who continue to work. An estimated 40 million employees in the USA are beneficiaries of Private Pension and welfare Plan²⁸³

²⁸² Eduard A Lopez: Social Security programs in the US Social Security Bulletin Apr 1987, Vol, 50, No, 4, Page- 20-23.

²⁸³ Sharma A.M, Aspect of Labour Welfare and Social Security In India, P- 190

3.4.1.9 Social Security Program, 1977:

Major legislation changes were introduced on December 21, 1977. The law imposed higher social security contributions on more than 100 million contributions to the national retirement program and on their employment. This enactment was designed to meet the financial problems facing the social security system. The benefit amount would be on an average 05% lower than those paid previously due to the revision of the benefit formula. This program also provides improved benefits for retirees over 65 years of age, who continue to work.

3.4.1.10 The Omnibus Reconciliation Act, 1981:

Low Income Home Energy Assistance Program (LIHEAP) was established under the XXVI of the Act.²⁸⁴ It has been in effect since fiscal year 1982. The program is administered at the federal level by the Department of Health and Human Services (HHS). The Department of House and Urban Development (HUD) also provide subsidized housing. The natural school lunch program is designed to help and safeguard the health and well bring of the nation's children by assisting the states in providing and adequate supply of the food for all children at a moderate cost²⁸⁵

3.4.2 The United Kingdom

The UK has a Social Assistance Program for the poor from the Elizabethan period. The Poor Act of 1601 recognized the responsibility of society and government for the destitute and poor. The UK is one of the leading countries on social security programs especially problems of poverty. The social security programs mainly comprised the education and

²⁸⁴ The Omnibus Reconciliation Act, 1981

²⁸⁵ Sharma A.M, Aspect of Labour Welfare and Social Security In India P- 52

health services for all, housing and employment for maintenance, the care of the aged, handicapped, and the nutrition of mother and children, besides sickness and industrial injury benefits, widows and retirement pensions and family allowances. A brief detail of the social security legislations is given below²⁸⁶.

3.4.2.1 The Workmen's Compensation Act, 1897:

The Act provided earning related compensation to employees in case of disablement arising out of injury sustained at particular types of work. The deaf employed persons were excluded from the benefits. Supplementary benefits also paid to minor. The employee's contribution was ranging from 05% to 09% of earning according to weekly wage bracket up to maximum 285 pounds. Employer was to pay from 05% to 10.45% of employer wage bracket. The government pay amount equal to about 14% of cost, full cost of income-listed allowances. The compensation was paid directly by the employers. The right to compensation could be established through the courts. The work injury benefits did not specify any minimum qualifying period. The compensation was available in most spheres of employment in 1906.

3.4.2.2 The Old Age Pension Act, 1908:

The Act provides old age pension to all residents over 65 years of age for men and 60 for women. Coverage was optional for employed persons earning less than the minimum weekly income level (38 Pound). It was below 2075 Pounds for self employed and non-employed. The condition for benefit was 50 weeks of paid contribution for one year, but changed to 52 weeks after April 1978 and reckonable years equal to approximately 9/10th of the year in working life. The employee, employer and the government contribution, were fixed, 05 to 09%, 05 to 10.45% if their earning (according wage bracket) and 14% of cost respectively.

²⁸⁶ www.dwp.gov.uk/

3.4.2.3 The National Insurance Act, 1911:

(Invalidly Insurance)

The Act introduced compulsory insurance against unemployment for workers in specific industries and against the medical costs and earnings lost by low paid workers during the periods of sickness. These benefits were available as a right in return for contributions. Cash sickness benefit was provided to employees for contribution of 28 weeks in a year. There was no means test. The employers, employees and an exchequer supplement financed the scheme. The sources of the scheme included the contributions from employees (05 to 09% of his earning capacity) employer (05 to 10.45% of employer wage bracket) and government at the rate of 14%.

3.4.2.4 The Sickness and Maternity Act, 1911:

The Act provided cash and maternity benefits to employed persons whose earning are 38 Pounds or more and to self employed persons whose earning are 1,970 Pounds a year or more. The employers, employees and government contributed to these schemes in the same ration as specified in other enactments. A minimum contribution of 26 weeks for cash sickness benefit and 26 weeks of the 52 weeks period, 14 weeks before the body expected for cash maternity benefits. There was no qualifying period for medical benefits as well as work injury benefits.

3.4.2.5 The Social Security and Housing Benefit Act, 1982:

This enactment provided the system of housing benefits in administrative rationalization with effect from April 1983. The provision

was made for the first 08 weeks of sickness and injury, for payment of statutory sickness pay in place of existing sickness or injury benefits²⁸⁷.

3.4.3 Japan.

Japan is one of the leading Asian countries in the Social Security Schemes. It is the first country to establish a comprehensive social insurance system in the region. Economy of the nation was shaken by the World War II and thereafter. But the progress of the social security movement has not suffered. Brief details of the social security measures available in the nation are mentioned below.²⁸⁸

3.4.3.1 The Health Insurance Provisions 1922:

(Amended in 1984 and 1986)

This program represented an integration and institutionalization of the existing mutual aid association programs for companies or large corporations employees. The cash sickness and maternity benefits were provided to the covered employment. The employee scheme was financed by the contributions of employees, employers²⁸⁹ and the government.²⁹⁰

3.4.3.2 The National Health Insurance, 1938:

(Amended in 1958)

The scheme covers all residents and had special system for seamen and public employees. This scheme was based on contributions from insured person and government. There were no participation form employers. An average annual contribution 117,388 Yen per household was fixed. The government contributed 50%, medical, administrative and some subsidies. The medical benefits were provided to all residents in

²⁸⁷ Sharma A.M, Aspect of Labour Welfare and Social Security In India, P- 190

²⁸⁸ www.ipsss.go.jp/

²⁸⁹ Employees at the rate of 4.2% of pay and employers at the rate of 4.2% of pay roll

²⁹⁰ 1.6% of benefit cost and cost of administration

municipality or membership in occupational association. It is designed to cover the oldest, poorest and most sick segment of Japanese society.

3.4.3.3 The Employees Pension Program 1941:

This program is a contributory; cover regular wage and salary workers employed in Industry and Commerce. The workers over 60 years for men and 55 years for women (including seamen and miners) are entitled for old age pension, provided they contribute at least for 20 years. The scheme also provided Invalidity and Survivors Pension at various authorized rates. Employees and employers contributions are 6.2% of earning for men and 5.725% for women employees and employers to pay 6.2% of the wage bill.

3.4.3.4 The Unemployment Benefit Program, 1947:

It covered all employees to all enterprises not included under the voluntary coverage or special system. Employee should pay contribution of 06 months out of last 12 months, but extended to 48 months in case of sickness and injury, maternity etc, Insured person to pay 0.55% of his earning, where as the seasonal workers pay 0.65%, employer to pay 0.9% of pay roll and 01% to 1.10% in case of normal seasonal workers. Government also contributes to the scheme at 25% of benefit cost and cost of the administration. This law was amended in 1975 so that coverage is compulsory for all industries and commercial firms with more than 05 employees. Voluntary coverage is available for employees of smallest firms and agriculture workers.

3.4.3.5 The National Pension Program. 1959:

The National Pension Program has a contributory as well as non-contributory segment. The contributory program, in turn has a compulsory and voluntary part. The contributory part of the program also exist for special groups such as civil servants, agriculture workers, seamen, private

school teachers, fishing etc. The Scheme covers all adult in general. The pension is admissible to person over the 65 years and must have paid 5.25 years of contribution. The invalidity is also paid at the rate of 75%.

3.4.3.6 The Family Allowances Scheme, 1971:

The scheme covers all residents with 02 or more children under the age of 18 years, including at least child who has not completed compulsory education (usually 15 years). It also provides special system to pay 70% of the cost. Government also pays 30% of the cost.

3.4.4 Australia.

The progress of social security protection in the country was very slow in the beginning. The country provided for public health and public education facilities to its citizens. But at present it has a social security system that provides protection to most of the residents against common risks to income and health. The social security services are now financed by one simple method and are embodied in the Australian Social Security Consolidation Act, 1947. It provides various benefits like old age pension, invalid pension, maternity allowances, sickness, funeral and other relevant benefits to the covered persons. A brief details on the subject is given below²⁹¹.

3.4.4.1 The Old Age, and Invalidity Pension Scheme 1908:

This scheme covers all residents of nation over the 65 years of age for men and 60 years for women, with at least 10 years of continuous residence proof for old age pension benefit. Invalidity pensions are given

²⁹¹www.facs.gov.au/

to persons, who are permanently blind or permanently incapacitated, provided they are above 16 years of age. The Act was amended in 1942 to include widow pension. This system provides for survivors pension women (widowed, divorced, or deserted) without any child if aged above 50 years. This system provide care pension to severely handicapped spouse at home. The government from general revenue finances the scheme

3.4.4.2 The Family Allowances Scheme, 1941:

This scheme provides for allowances to residents with 01 or more children under the age of 16 years (25 if student). The scheme was extended to the Orphans Pension, 1974, the Handicapped Children Allowances, 1977, and the Family Income Supplement, 1982. The Orphan Pension was given to dependents whose parents dead (or one dead or one in prison or whereabouts of the other unknown). It is payable with family allowances. Handicapped child allowances are paid to severely disabled (slightly less, if low income family) and cared for at home. Family income supplement is provided to low-income person with children. Government provides all financial requirements for the scheme.

3.4.4.3 The Unemployment Benefits Scheme, 1944:

This benefit is payable to a person between 16 years and 65 years of age for men and 16 to 59 years for women, who is unemployed and capable of undertaking suitable work and who has taken reasonable steps to obtain such work. A person who seeks assistance need not establish a previous employment records and even a self-employed person can obtain benefit if he becomes ready to make employment. Unemployment should not be due to voluntary act, misconduct, a labour dispute or refusal of

suitable offer,. The government from general revenue finances the entire scheme²⁹².

3.4.4.4 The Sickness and Maternity Benefit Program, 1944:

Initially the scheme provided for cash sickness benefit to covered persons. Subsequently the scheme was extended to programs like Cash Benefit, 1953, Medical And Hospital Insurance, 1973, Universal Medical And Hospital Insurance 1983. Medical benefit was given to gainfully occupied persons with limited income, with age between 16-64 years for men and 16-59 for women with 01 year of residence immediately before sickness or intent to reside permanently. The government out of general revenue system finances medical benefit and cash benefits. Government also provides subsidies for medical and medical grants to states for public operating cost

3.4.4.5 Social Security Consolidation Act, 1947:

This Scheme provides various benefits like widows pension, maternity, and funeral. For purpose of widow pension benefit, Act classified widows under four categories according to age and depending of children. Women may claim widow pension, if the husbands are imprisoned or become inmates of hospitals owing to insanity or if they are divorced. The rates of maternity allowances were increased. A child endowment for every child is granted to the mother for maintenance, training and advancement of child up to the age of 16 years. A funeral benefit confined to old age and invalidity pensioners was also provided. In the scheme all these benefits are made out of a statutory natural welfare

²⁹² Giri, V.V, Labour Problems In India, P-277

Fund, made up of Social security contributions assessed on the basis of taxable income as per the law.

3.4.5 Federal Republic of Germany

Bismarck was the first individual who took interest in the protection of the working class in the country. He is considered as the father of the social security protection programs of the workers. A comprehensive social security insurance system was introduced at his initiative. It was the beginning of new era of social security protection system. The Federal Ministry of Labour and Social Affairs is responsible in general support of all benefits. Brief details of the social security measures provided in the country are as follows²⁹³:

3.4.5.1 The Wage Earner's Sickness Insurance Act, 1883:

This scheme provides all wage earner, and self-employed persons earning up to DM 51,300 a year. Students are covered under medical benefits. There is special system introduced under the Special Insurance System (Cash and Medical Benefits), 1927, for miners, artists, public employees, and self-employed, and voluntary coverage for salaried employees earning more than DM 51,300. a year. The insured persons were to pay 19% to 30% of the earning. Employer has to contribute 03 to 19% of the pay roll. Government provides subsidies to maternity grants; and cost of maternity leave. the scheme provides cash sickness and medical benefits. Cash maternity benefit also provided to employees and other members, provided they contribute for 12 weeks of insurance or

²⁹³ www.bma.de/

insurance or employment relationship between 10th and 04th months preceding confinement

3.4.5.2 The Accident Insurance Act, 1884:

This enactment provides compensation in case of work injury to employees covered, self employed, apprentices' students, child in KGs and family helpers. Average contribution was 14% of the total pay roll. Government provides subsidy to, agriculture accident insurance fund, for coverage of students, children in KGs. The scheme of work injury was extended to occupational diseases in 1925 under the Occupational Diseases Act.

3.4.5.3 The Invalidity and Old Age protection Act, 1889:

This scheme provides old age pension to person over the age of 65 years, with 180 months contributions to the scheme. The scheme also provides invalidity pension in case of reduction of earning capacity at various specified rates, to covered person, who contributes at least for 60 months. The state Insurance Office in each state administers the scheme. Employers and employees or covered person contributes at 09.35% of pay roll (18.7% if employees earns below 10% of ceiling) and 09.35% of earning (none if earning below 10% of ceiling) respectively. Government aids includes annual subsidy (about 15% of total cost of insurance pension) and contribution of 18% in case of maternity leave and unemployment. This law was amended in 1911, 1957, and 1973 and new provisions were included for the better protection of working class. Special system for self employed person (compulsory or voluntary) covered miners, artists, public employers, and farmers, minimum income pension scheme also introduces for covered persons, who have 25 years of insured employment.

3.4.5.4 The Unemployment Insurance Act, 1927:

This scheme provides unemployment benefits to employed persons including agriculture workers, home workers, apprentices and trainees. It excludes casual and family labour. The insured person and employer contribute at 02.15% of the earning (none if earning below 10% ceiling) and 02.15% of pay roll (4.3 to 5.86% for employees earning below 10% with effect from Jul, 1987). Government provides subsidies, under employment promotion law and for any deficit. It also contributes for the cost of unemployment assistance and social insurance contribution for unemployment. Benefits are subject to certain qualifying conditions like, 360 days of insurance is must in 03 years where as it is 180 days for seasonal; workers.

3.4.5.5 The Family Allowances Scheme, 1954:

This scheme provides family allowances to parents, who are residents with 01 or more children below 16 years of age. Government bears the whole cost of the program. The Scheme was amended in 1974 to provide for special provisions for foreign workers with children living abroad²⁹⁴.

3.4.5.6 The Occupational Safety Act, 1974:

The purpose of this scheme is to provide benefits to victims as well as their dependents in case of occupational accidents. It also provides occupation safety mechanism, which include, industrial medial officers and employers. Their duty is to assist the employees in their program of health care and prevention of accidents. There is also provision for payment joy compensation list of occupational diseases. Occupational Diseases are placed on the same footing as employment accidents.

²⁹⁴ US Dept of Health and Human Services Research Report-61, Social Security Program through out world, 1982, P-94-95

3.4.5.7 The Rehabilitation Benefit Alignment Act, 1974:

The purpose of this Act is to promote rehabilitation of handicapped by extending certain benefits to them. This scheme was introduced on 01 October 1974.

3.4.6 China:

The People's Republic of China's economy is determined by the State Sector Enterprises. The trade unions have vital role in shaping the social security provisions of the nation. The national social security programs provide varieties of protection to its working population as well as to its other residents. The social security provisions covers approximately 15% of the working population. Workers covered by these programs represent the majority of China's urban labour force²⁹⁵. A brief detail of social security protection in the country is mentioned below.

3.4.6.1 The Old Age, Invalidity and Survivor Scheme, 1951:

This scheme covered employed persons in state run enterprises and contract workers in general, and special systems for employees of government cultural, education and scientific institution. Insured person and contract person has to pay 03% and 15% of basic wage respectively. Government gives subsidy as and needed. The old age benefit is payable at 60 years to men and at the age of 50 years and 55 years to blue collar and white collar female employees respectively. This is equal to 60% of the last month wage after 10 years of continuous service in the same

²⁹⁵ Lillian Liu. Recent Social Security Development I people republic of China, a Social Security Bulletin, Apr 1987, Vol, 50, No, 04, P-75

enterprises. In addition, a supplement of 5.40% of the monthly benefit, depending on the length of service, participation in revolutionary (pre 1949) wars, were/ awarded to outstanding performances. The total benefit may exceed to 100% of pre-retirement earning. A monthly pension for permanent total disability is payable in the same amount as the old age benefit, if the worker has at least 10 years of continuous service and has reached a specified age of 50 years for men and 45 years for women²⁹⁶. Survivor grant is payable to dependent of the deceased covered employees or pensioner

3.4.6.2 The Cash Sickness and Maternity Scheme, 1951:

This scheme provides such maternity and medical care facilities to all covered person. The cash maternity benefits from 60% to 100% of wages (according to the length of service) for the first 06 months of illness, and from 40 to 60% of wages there after until recover or determination o a permanent total disability. A cash maternity benefit of 100% of wages is payable by employer for a total 56 working days before and after confinement. Medical care is provided either by the enterprises own clinic paid for directly by the employer. Medical services cover general and specialized care, hospitalization, and ordinary medications, the patient pays a normal registration fees from both ambulatory and inpatient care as well as board, if hospitalized²⁹⁷.

3.4.6.3 The Worker's Compensation Scheme, 1951:

This Scheme provides compensations to worker covered in case of temporary or permanent injury or illness. Workers with temporary work related illness and injuries receive 100% of earning plus subsidies equal to

²⁹⁶ Ibid, P- 76

²⁹⁷ Ibid

2/3 of their food expenses, until recovery of determination of permanent disability is completed. In case of permanent partial disability, a monthly benefit of 10 to 30% of pre disability wages is payable, depending on the degree of earnings loss due to disability. Compensation for total permanent disability is paid monthly at 80% of the pre disability wages with an additional 10% of wages for constant attendance, if necessary.

3.4.6.4 The Unemployment Benefit Scheme, 1986:

This scheme provides unemployment benefit in case of dismissal, company bankruptcy, or recognition or expiration of work contract-to-contract worker. The covered and insured person does not contribute to this scheme. Employer has to pay 01% of pay roll to the scheme. Local government also provides subsidies to the scheme.

All the social security programs are financed by the individual enterprise. The employee does not contribute. China's state sector maintenance system provides higher benefits. There is no central administration to the social security programs for employees in state sector and large urban enterprises. The Ministry of Labour and Personnel (MLP) establishes the guidelines for in care maintenance program for state sector enterprises to be applied nationwide. The Ministry of Public Health (MPH) supervises all the hospitals and clinics providing care to covered employees.

3.4.7 New Zealand:

New Zealand is one of the leading nations, which provides all kinds of social security provisions to its residents. The process of social security protection was initiated in 1898, when the Old Age Pensions Act was enacted. But the provisions were based on stringent means test. This

was the milestone in the foundation of social security movement in the nation. Brief details of the social security measures adopted in the country as follows.²⁹⁸

3.4.7.1 The Old Age, Invalid and Death Act, 1898:

Initially, this act was providing old age pensions to Person over the age of 65 years after 25 years of residency in the country. But the subsequent amendments extended the scheme to widows and dependent children in 1911, and other classes, Blind person in 1924, Invalidity Pension in 1936, and the National Supperannuation in 1976. There was contribution to this scheme from employer as well as employees or insured person. The government bears the entire cost, financed from general revenues. It also financed the sickness, maternity, unemployment benefit and family allowances. The Scheme provides old age pension to persons over the age of 60 years with 10 years of residence after 16 years of age. Invalidity pension includes compensation fro reduction in working capacity, whether total or partial, to covered person, provided they resides during last 10 years. Survivor pension is provided to widows of specified or orphan, who have resided during 03-05 years in the nation.

3.4.7.2 The Comprehensive Accidents Program, 1908:

This scheme provides cash and medical benefits to all residents. Medical benefits are eligible for covered residents for personal injury in accident only. Government pays for the cost of motor vehicle accident victims. The government out of revenue fund finances this scheme. Employer and self-employed person contribute at average rate of 12.25% of pay roll, and 3.75% of income respectively. In order to avail this injury related benefits covered person has to work at least 07 days before and after injury. There is no minimum qualifying period for non-work related injury.

²⁹⁸ www.dsw.govt.nz/

3.4.7.3 The Family Allowances Scheme, 1926:

It was started in 1926 to provide for family benefit to all residents with 01 or more children. Subsequently certain other schemes were added to this act, as family maintenance allowance, 1968, domestic purpose benefit, 1971, handicapped child allowance 1978, and family support, in 1985. The maintenance allowances are paid to residents with 01 or more children below 15 years (18 years if invalid or student) resident, during last 12 months are paid. Child's handicapped allowances paid to parents subject to age and residence conditions. Domestic support benefit to unsupported single parent, aged 16 years and over with resident condition of 10 years.

3.4.7.4 The Unemployment Benefit Scheme, 1930:

This scheme covered gainfully occupied persons of limited income. But does not cover pensioners fulltime students. The government out of genera revenues finances the entire cost of the scheme. In order to get unemployment benefit, covered person had to fulfill the condition of residence of 16 years or older.

3.4.7.5 The Social Security Act, 1938:

This act was enacted to provide for the payment of superannuation benefits and other disabilities arising from age, sickness widowhood, orphan hood, unemployment, or other exceptional conditions. It also provides a system where by medial and hospital treatment will be made available to persons requiring such treatment. Further it provides such other benefits as may be necessary to maintain and promote the health and general welfare of the community. Evidently, the Act made a very wide claim of coverage of contingencies, which almost guaranteed the citizens

all sort of benefits from cradle to the grave. The government form general revenues financed this system.²⁹⁹

3.4.7.6 The Emergency Benefit, 1939:

This was an important innovation in the field of social security. The benefit was designed to provide for claimants, who failed to fulfill all essential eligibility conditions, but who would suffer hardship if their applications were declined. The granting of the class of benefit is at the discretion of the commission

3.4.7.7 The Universal No-Fault Accident Insurance Scheme, 1974:

The Accident Compensation Act granted earning related compensation to employed person for loss or reduction of earning capacity from any accident regardless of whether or not it is connected with employment. It also covers a sizeable proportion of the population who never had the benefit of accident coverage of any kind. Among these are non-employed person, housewives, children and students as well as elderly people. Visitors to this country also have cover while on New Zealand 's soil. The Act includes compensation for occupational diseases, but excludes any disability arising from sickness related to employment. The social security measures have thus drawn a line of demarcation between accident and sickness. The Accident Compensation Commission, established by the act, is entrusted with paying cash benefits as well as entertains accident pertaining and rehabilitation.

²⁹⁹ Sharma.A.M, Aspect of Labour welfare and Social Security In India, 2003, Himalya Pub, House New Delhi, P-190

3.4.8 Sweden

This country has various social security schemes for its people like old age, invalidity, and survivors insurance, medical care, sickness insurance, industrial injury insurance, unemployment insurance scheme and parents' cash benefits. The social security schemes in this country aimed at benefiting the entire nation and not merely gainful employed persons. The character statistics of the social security system is that employers are not required to contribute except for few schemes³⁰⁰.

3.4.8.1 The Sickness Insurance Scheme. 1880:

This scheme was voluntarily in nature, administered by voluntary societies. The State aided voluntary scheme is administered by approved sickness benefit societies supervised by a special division of the National Pension Board. This scheme is financed by the societies to the extent to 2/3rd of the remainder by the state subsidy. Medical benefits consists primary of a refund of 2/3rd of the expense incurred for medical treatment according to work owing to sickness. There is no limit for medical benefits, while the sickness benefit (cash benefit) payable for more than two years.

3.4.8.2 The Sickness and Maternity Schemes, 1891:

This scheme provides cash benefits to all gainfully occupied persons earning, 6,000 Kroner a year or more. There was no contribution for employees, but employers and self employed person paid 10% of the bill till 01 Jan 1985. Which cover about 85% of its cost. The government contributes 15% of cost of scheme. Cash benefit was paid to each parents, provided they are insured for at lest 270 days before confinement. The

³⁰⁰ www.rfv.se/

medical benefits were enacted in 1931, under the same scheme, which provides medical benefits to all residents. But children under the age of 16 years of age were covered by the parents insurance.

3.4.8.3 The Old Age, Invalidity and Death Scheme, 1913:

This scheme provides old age pension, invalidity and survivors pension to all residents' citizens. Earning related pension was also payable to employees, self-employed persons subjected to certain limits of earning in a year. Employer was to pay 9.45% of the pay roll. The contribution for the earning related pension was 10.2% of pay roll. Government contributed 25% of the cost. Employees do not contribute for the pension scheme. The scheme provides old age pension to all person over the age of 65years. Invalidity pension was paid as $\frac{5}{6}$ th of the working capacity or $\frac{1}{2}$ loss for reduced pension. Survivors pension was paid to widow and orphan of specified age. The scheme was amended in 1962 and 1976, to provide for partial pension and other Social Insurance Schemes.

3.4.8.4 The Unemployment (Union related) Benefit Fund, 1934:(amended in 1956).

The scheme provides unemployment assistance to employees belonging to approve unemployment funds established by the Trade Unions. Related unions has to contribute 15 to 40 Kroner a month, membership in fund has to be for 12 months, including 05 months in last 12 months prior to unemployment. The government was to pay 46% of the cost.

3.4.8.5 The Family Allowances Scheme, 1947:

This scheme covers all residents with 01 or more children. The children must be below the age of 16 years. The government wholly

finances this scheme. Government also provides certain allowances to the parents.

3.4.8.6 The Unemployment Insurance Act, 1972:

This program is administered by the recognized unemployed funds supervised by the Employment Market Board. The scheme is applicable to all employees and would be an employee over 16 years of age. The employers were to pay 02% of pay roll. The government also contributes about 33% of the cost.

3.4.8.7 The Employment Injury Act. 1977:

This scheme was introduced from 01 Jul 1977. The scheme provides pension benefit from the employment injury. The scheme will cover part of loss of income not compensated by the general pension scheme. The benefits are designed in principle to put the insured person in the same economic position as if he had not been injured. As regards, coverage, every employee is required to be insured according to the Act. The work injury is defined in comprehensive and flexible ways. The scheme does not specify any qualifying period for benefit. This scheme is based upon the principle that injuries incurred at work constitute grounds for higher compensation for loss of income to other kinds of injuries. Moreover this scheme is also applicable to self-employed residents. The self employed resident and the employer to pay 0.6% of the pay rolls. Government only provides subsidies to sickness insurance.

3.4.8.8 The Migration Benefit (Amendment) Act, 1979:

This Act provides that migrant workers residing in Sweden are entitled basic pension on same conditions at the specific rate and with some additional benefits as Swedish nationals are provided. The migrant workers have to fulfill certain condition for the benefits. The old age pension is paid if the insured person had been a resident of Sweden for at

lest the last for 05 years preceding old age pension entitlement, and for at least 10 years after age 16 years. An invalidity pension is provided to insured person who has been a resident of Sweden for at least the five years preceding his or her disability, or who had been normally employed for at least one year without interruption during his or her period of residence in Sweden. A widow's or child pension is also paid, where the deceased person had been a resident of Sweden for at least five years immediately prior to his death and survivor was a Swedish resident at the time of insurance or the survivor had been living in Sweden. From at least five years, an either the survivor or deceased resided in Sweden at the time of death

The country has been in the forefront in the sphere of social security schemes. Firstly these schemes are interconnected and form a strong bulwark against common risks to income security. Finally, these schemes are strengthened and supplemented by a well-organized provision of social benefits like public health service, family, child and youth welfare service, sound housing policy and public assistance.³⁰¹

3.4.9 A Bird's Eye View:

Majority of the countries of the World provides the social security assistance as well social insurance programs of social security to its citizens and non-citizens. But the success rate depends upon the social, economical and political conditions prevailing in the countries. The forms of the governments or the structures of the national governing body plays a vital role in shaping the policy of the nation, social security has no exception to this effect. It is agreed that some developed countries have

³⁰¹ GiriV.V, Labour Problems In India P-275

done remarkable progress in the social security protection programs, countries like USA, UK, Japan, Sweden, China, etc. These countries have made social security as an instrument of human development and protection. The countries have recognized the significance of the social security in the economical development. While the progress of the social security protection in the developing countries is inadequate, due to administrative and financial constraints to their economy.

The maternity benefits are provided to unmarried mothers in the Russia and Sweden. The Old age and survivors benefits are dominant in the USA, Japan, Australia, Sweden, and many other countries. Rehabilitation benefits to disabled due to employment injury are provided by the Japan, Russia, Sweden, and Australia. Sickness benefits (Cash Benefits) and medical benefits, which are considered as backbone of the system, are provided by majority of the countries, but the conditions are different. Patient in Japan, Sweden, China and other countries pays nominal registration fees. Some countries provided these benefits to covered persons only, but some nations especially developed countries provides the benefits to all residents as well as to non-residents. Countries like Russia, USA, UK, and Sweden have adopted universality approach regarding social security system.

The ILO and ISSA have done commendable progress in promoting and developing the uniform social security system at the World level. But the Conventions and Recommendations are modified according to the social economical and political conditions. The guidelines of the ILO have been followed by majority of the nations like Sweden, Japan, USA, UK, Russia, Australia, China, and New Zealand. The Comprehensive social security system is prevailing in China, Japan, Australia, USA, UK, Russia, Germany, and New Zealand. This provides almost all kinds of protection to all members of the society.

The Social security systems appears as an institution creating subjective rights incorporated and protected as other fundamental human rights. These rights are on sound basis, developed in social security law of various countries on general principles, like universality, social justice, territoriality, equitable covering reciprocity, etc. adopted according to needs of a particular country, as the public policy on social security depends on the social and economical positions in the particular nation. Due to the differences in socio, economic, political realities, national laws and international standards are affected. It is suggested that some uniform standards are designed, which bridges the gap and discrepancies between national and international standards on social security legislation. The social security programs should be considered as the vital weapons against the disablement, sickness, and other risks arising out of employment. Social Security is very important for the economical development of any nations progresses. Because the nation progresses with its able population and they contribute to its promotion. The developed nations have been following this path since its introduction. Developing nations have to overcome its socio, economic, and political constraints to implement the social security system for its citizens against all the risks as mentioned above. In order to compete in era of globalization and liberalization, it is desirable to have a Comprehensive Security Social System.

3.5 The International Labour Organization's Conventions/Recommendations on the Social Security Schemes

India has been the original member of the ILO since its inception in 1919. India was one, which sent a full delegation to the first session of the International Labour Conference held at Washington in 1919. The

Indian delegation comprised of Government representatives, Sir Atul Chatterji and Sir, Louis Kershaw; employers delegate Sir Alexander Murray and workers delegate Shri NM Joshi.

Britain being a major power responsible for the establishment of the ILO also helped India in becoming its member. India was not fully independent yet it was admitted within the fold of the ILO. British Government was motivated by her selfish interest when she struggled for India's membership of the ILO and her nomination as one of the eight countries of chief industrial importance; for this would secure the collateral support of India for Britain in her struggle for leadership at Geneva. It is also argued that India's admission to the League of Nations and the ILO was in the nature of a reward for the help she gave in the First World War to the Allies.

India's membership of the ILO proved of a very great advantage to her in establishing a liaison and a forum for non-governmental delegates from India with their European counterparts for exchanging information on socio-economic conditions. The representative workers got an opportunity to expose the anti labour and economic conditions in India during British regime. Finally the ILO was became of new hopes and faith for economic and social survival of Indian labour

India became a free and independent country in 1947. Besides being a founder member of the ILO, India is also a permanent member of the Governing Body. After 1947 India completely reoriented its attitude towards the ILO. Indeed, the ILO ideals and objectives closely resemble to basic objectives enshrined in the Indian Constitution. Both are committed to freedom, social, justice and peace. Mr. VV Giri, the former President of India, addressed the 54 the Session of the International Labour Conference at Geneva on Jun 10, 1970. Mr. V.V Giri said, " We need a plan of social

justice .The social and economic order, required by the new society, which are building, should appear not as an objective to be achieved in the distant future, but it must appear as a reality at every step of policy and practice pervading all our activities. This is our concept of a socialist society, which we are trying to establish and build in India. I am sure that this conference will strive to fulfill this expectation and I hop that, the ILO will be a leader in this process”³⁰²

India and the ILO are committed to World peace, freedom and social; justice and starving the socio-economic betterment of the long suffering, long forgotten people, the people who are under privileged and undernourished, with the fullest realization that any further delay would be fatal to themselves and to the whole world.

3.5.1 Compliance of The ILO’s Conventions in Indian Social Security Legislations:

India’s performance has not been encouraging in ratifying the ILO’s Convention on social security. It has ratified only 05 Conventions out of 35 total Conventions on the social security till July 05. Because majority of the Conventions on the subject are not suitable for the Indian social and economic conditions and had various constitutional and administrative difficulties in ratification. India has so far ratified 39 out of 184 Conventions of the ILO in all. Brief details of the ILO’s Conventions on social security ratified by the India³⁰³.

³⁰² www.ilo.org

³⁰³ Ibid

(a) Workmen's Compensation (Occupational Diseases) Convention No. 18 1925:

The Convention provides compensation to workmen incapacitated by occupational disease, or in case of death from such disease, to their dependents. This Convention was ratified by India on 30 Sept 1927. The subject matter was included in schedule- III of the WMC Act, 1923.

(b) Equality of Treatment (Accident Compensation) Convention No. 19, 1925:

The Convention deals with equality of treatment for national and foreign workers as regards workmen's compensation for accidents. This was ratified on 30 Sept 1927. Protection provided for foreigners is equally de jure in India.

(c) Workmen Compensation (Occupational Disease) Convention (Revised) No. 42, 1934:

This Convention deals with compensation to workers disabled by occupational disease or in case of death arising out of such disease to their dependents. Certain of the occupational diseases included in the convention were added to the Schedule III of the WMC Act 1923. It was ratified on 13 Oct 1964.

(d) Equality of Treatment (Social Security) Convention No. 118, 1964.

This Convention provides equality of treatment of foreigner workers with national for social security. This was ratified on 19 Aug 1964. India has only ratified the provisions in Branches (a) to (c), (e) and branches (a) to (c) and (i).

(e) Employment and Social Policy Convention 122, 1998:

The Government of India ratified this convention on 17 Nov 1998.

Article I of the convention lays down,

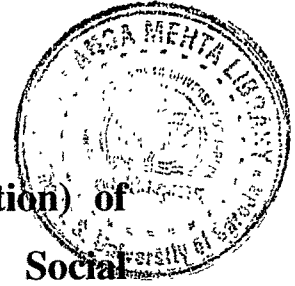
(i) With a view to stimulate economic growth development, raising levels of living, meeting manpower requirements, and overcoming unemployment and under employment, each member shall declare and pursue, as a major goal an active. Policy designed to promote full, productive, and freely chosen employment.

(ii) The said policy shall aim at ensuring that (i) there is work for all who are available for and seeking work. (ii) Such work is as productive as possible and fullest possible opportunity for each worker to qualify for and to use skill and the endowments in a job for which he is well suited; irrespective of race, colour sex, religion, political opinion, national extraction or social origin.

(iii) The said policy shall take due account of the state and the level of economic development and mutual relationship between employment objectives and other economic and social objectives, shall be pursued by methods that are appropriate to national conditions and practice.

While the ILO Conventions have provided a model and support to existing social security legislation in India yet several important standards could not be adopted due to administrative and financial reason, and also due to underdeveloped growth of the Indian economy.

PITH
11482



3.5.2 Implementation (Partial Ratification) of the Conventions relating to the Social Security in the Indian Social Security Legislations:

India has not ratified some of the ILO's Conventions on social security, but has provided certain provision under various enactments. A brief details of such subject matters is mentioned below:

(a) Maternity Protection Convention No. 03, 1919 and Revised Convention No. 103, 1952:

These conventions provide comprehensive protection to pregnant workingwomen in case of unemployment is due to childbirth. The Convention No. 3 was originally applicable to workingwomen employed in industry. Now it has been revised by the Convention No. 103, which covers agriculture labour also. The Indian Maternity Benefit Act, 1961 imposes the responsibility for payment of maternity benefit on employers. The Conventions required that the benefit should be provided either out of public funds or through system of insurance. In the ESI Act, 1948, the coverage is less than one prescribed in the Convention

(b) Workmen's Compensation (Accidents) Convention No. 17, 1925:

The Convention provides for the payment of compensation for employment injury to all employees, except those employed in agriculture, shops, and fishermen. The WMC Act, 1923 and the ESI Act, 1948 provides the payment of compensation in case of accident arising out of and in course of employment.

(c) Unemployment Indemnity (Shipwreck) Convention No. 08 1920:

It provides indemnity against unemployment resulting from loss or foundering of a vessel on which the seafarer served. Some suitable amendments were made to the Indian Merchant Shipping Act, to carry out some of the objects of the conventions.

(d) Sickness Insurance (Industry) Convention No. 24 of 1927:

It provides compulsory sickness insurance for workers in Industry and commerce, for domestic servants. The ESI Act, 1948, provides certain sickness benefits.

(e) Employment Injury Benefit convention No 121, 1964:

This convention provides payment of cash and medical benefits in cases of employment injury. There are two status concerning employment injury namely the WMC Act, 1923, and the ESI Act, 1948, provides cash and medical benefits.

(f) Invalidity, Old Age, and Survivors Benefits Convention No. 35,37, 39 and 128, 1967:

These provides for payment of compensation in case of Invalidly and death or Old Age. The WMC Act, 1923, the ESI, and the Payment of Gratuity Act, 1972 provides old age benefits.

3.5.3 The ILO-India Relations on the Social Security:

The ILO and India have and enduring and active relationship, which has been marked by close and dynamic co-operation over the years, India is a regular member of almost all the Standing Tripartite Industrial

and Analogous Committees, which assist the Governing Body. These Committees deal with some of the important industrial sectors. India has actively supported and participated in the ILO's Technical Co-operation Programs.

The ILO's Technical co-operation in India covers various fields of relevance to Indian labour such as employment, occupational safety, and health improvement of working conditions, family welfare programs, and workers education. Under the new active Partnership Policy of the ILO, collaboration between the ILO and India is supported by technical inputs from the multi-disciplinary terms, in New Delhi (ILO-SAAT). During the years, technical specialists provided advisory services in international labour standards, labour statistics and also discussed areas of possible collaboration in the future. The Government with workers and employers organization worked closely with the ILO aimed to promote employment and social protection in the process of restructuring of the economy, elimination of child labour, management of working conditions and occupational safety and health I high risks areas.

ILO has made use of the training facilities available in a number of institutions in India including Central Labour Institute (Mumbai), regional Labour Institutes (Kolkata, Kanpur, and Chennai), the Vocational Training Institutes under the Directorate General of Employment and Training and the IIT and IIM. India also provides technical manpower for the ILO's activities.

During 2002, India participated in the 16 National Meetings and 11 International Meeting organized by the ILO. International seminar on Declaration Social Security and sustainable Development was conducted from 11 May to 13 May 2002 at Marari Kulum Kerela, India. ILO/Japan/US. Asian Regional Seminar on the Application of the ILO

Declaration on Fundamental Principles and Rights at work and its Follow-up, was organized from 25 to 27 Mar 2002 in Bangkok. These are the main meetings and conferences relating to social security conducted at the international level during year 2002-2003. In the era of liberalization and globalization, India has succeeded in protecting the interest of its labour class at the World level. ILO has provided a strong platform to India in promoting and protecting the interest. India has fully utilized the opportunities and also contributed to the activities of the ILO in shaping the labour standards at the World level³⁰⁴.

3.5.4 A Bird's Eye View

It has been observed that India was not in a position to ratify certain conventions in whole, but it has modified it for its local requirement. The purpose of the convention to provide certain relief to labourers in various risks or disablement has not been defeated. There are various enactments like the WMC Act, 1923, the ESI Act, 1948, the Maternity Benefits Act, 1961, the EPF and MP 1952, and the Payment of Gratuity Act, 1972, provides majority of social security protection in India. The ILO's Conventions have been considered guidelines for India's legislations. But the socio-economic and legal scenario has been kept in mind while considering these conventions. Where ever feasible India has ratified the convention in whole and when not possible it has ratified the convention in related subject matters in its legislations. ILO's Convention has been adjusted according to need and requirements of its labourers. It is basically due to lack of infrastructure in the social security system as well as the nature of the under developing economy of the nation.

³⁰⁴ www.ilo.org